UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

U.S.N.R. KOCKUMS CANCAR COMPANY, a Canadian corporation,

Plaintiff,

v.

RAPTOR INTEGRATION INCORPORATED, a Canadian corporation; MACHINAGE PICHÉ, INC., a Canadian corporation; and TIMOTHY MOSHER, a Canadian citizen,

Defendants.

CASE NO. C11-5935 RBL

ORDER CONSTRUING CLAIMS

This matter comes before the Court pursuant to *Markman v. Westview Instruments, Inc.*, 52 F.3d 967 (Fed. Cir. 1995), to construe the undisputed and disputed claim terms of United States Patent No. 5,911,302 ("the '302 Patent"). The Court has reviewed each party's opening and responsive brief, heard oral argument of counsel, and considered the remainder of the file and hereby construes the claim terms at issue as stated herein.

I. PROCEDURAL HISTORY

On November 14, 2011, Plaintiff U.S.N.R. Kockums Cancar Company ("USNR") filed a complaint against Defendants Raptor Integration Incorporated ("Raptor"), Machinage Piché, Inc. ("Piché"), and Timothy Mosher ("Mosher") alleging, among other claims, infringement of the '302 Patent. Dkt. 1. USNR asserted that the infringement claim was based on an alleged offer to sell an infringing product. *Id*. ¶ 37.

On August 17, 2012, USNR filed an amended complaint alleging patent infringement based on an allegation of at least one actual sale of an infringing product and an allegation of an offer to sell an infringing product. Dkt. 33, ¶¶ 38–40.

On March 8, 2013, the parties filed opening claim construction briefs. Dkts. 47, 49, & 50. On March 22, 2013, Defendants responded (Dkts. 52 & 53) and UNSR responded (Dkts. 54 & 55). On March 25, 2013, the parties filed an amended joint claim construction chart and prehearing statement. Dkt. 56.

II. PATENT

On June 15, 1999, the United States Patent and Trademark Office ("USPTO") issued the '302 Patent titled "Circulating Paddle Board Positioning Apparatus." '302 Patent at 1. The patent provides that the "invention relates to the field of sawmill machinery, and in particular to board positioning devices." *Id*., col. 1, ll. 6–7. The patent also states that

> it is the object of the present invention to provide a board positioning device which can accurately position selected boards lengthwise, that is, transversely across the transfer deck and process the boards through the trimmer at a higher rate of speed than prior art devices and without substantial board slippage or bounce, or collapse of the board's weak ends,

> to thus provide an improvement in maintaining a consistently accurate and optimally trimmed board.

Id., col. 1, ll. 53–61.

III. DISCUSSION

A. Legal Standard

It is the obligation of the court to construe as a matter of law the meaning of language used in a patent claim. *Markman*, 52 F.3d at 979. In construing a patent's claim terms, a court must consider the intrinsic evidence in the record. *See Phillips v. AWH Corp.*, 415 F.3d 1303, 1313 (Fed. Cir. 2005). Intrinsic evidence includes the ordinary and customary meaning of the claim terms, the specification of the patent, and the patent's prosecution history. *Id*.

The ordinary and customary meaning of a term is defined by a person of ordinary skill in the art at the time of the invention. *Id*. The context in which a term is used can be "highly instructive" in resolving the meaning of the term. *Id*. at 1314. For example, if a claim has the term "steel baffle," it strongly implies that the term "baffle" does not inherently include objects made of steel. *Id*. Other claims in a patent may also provide valuable contextual cues for deciphering the meaning of a term. *Id*. If a limitation is present in a dependent claim, then there is a presumption that the limitation is not present in the parent claim. *Id*. at 1314–15.

The claims must also be read in light of the specification. *See Markman*, 52 F.3d at 979. The specification is always highly relevant to the meaning of a claim term: "Usually, it is dispositive; it is the single best guide to the meaning of a disputed term."

Vitronics Corp. v. Conceptronic, Inc., 90 F.3d 1576, 1582 (Fed. Cir. 1996). If the specification reveals a definition of a claim term that is different from how that term would otherwise be used, then "the inventor's lexicography governs." *See Phillips*, 415 F.3d at 1316. Courts should take care, however, not to import limitations from the specification into the claims. *Id*. at 1323. For example, even if the specification describes very specific embodiments, the claim terms should not be confined to those embodiments. *Id*.

The prosecution history of a patent is the last piece of intrinsic evidence that a court should consider when construing the claims of the patent. *Id*. at 1317. The prosecution history provides evidence of how the USPTO and the inventor understood the patent. *Id*. A court, however, should be aware that the prosecution history represents the ongoing negotiation between the USPTO and the applicant, rather than the final product. *Id*. As such, the prosecution history may lack the clarity of the specification and may not be as useful for claim construction purposes. *Id*. In certain instances, however, the prosecution history may provide guidance of an applicant's intent to specifically limit the scope of a given claim term. *Id*.

Extrinsic evidence is the last category of evidence a court may consider when construing patent claims. *Id*. Such extrinsic evidence includes expert and inventor testimony, dictionaries, and learned treatises. *Id*. On its own, extrinsic evidence is unlikely to be reliable in guiding the court's claim construction. *Id*. at 1319. Instead, extrinsic evidence should be considered in the context of the intrinsic evidence. *Id*. A

court may also use extrinsic evidence to determine how a person of ordinary skill in the art would understand the claimed invention. *Id*.

Although it is the court's duty to resolve fundamental disputes among the parties as to the scope of a claim term, it is not the court's duty to construe every claim term, or to repeat or restate every claim term. *See U.S. Surgical Corp. v. Ethicon, Inc.*, 103 F.3d 1554, 1568 (Fed. Cir. 1997); *02 Micro Int'l Ltd. v. Beyond Innovation Tech Corp.*, 521 F.3d 1351, 1362 (Fed. Cir. 2008).

> Ultimately, the interpretation to be given a term can only be determined and confirmed with a full understanding of what the inventors actually invented and intended to envelop with the claim. The construction that stays true to the claim language and most naturally aligns with the patent's description of the invention will be, in the end, the correct construction.

Phillips, 415 F. 3d at 1312 (citing *Renishaw PLC v. Marposs Societa' per Azioni*, 158 F.3d 1243, 1250 (Fed. Cir. 1998).

In the instant case, the parties agree that some claim elements should be construed as means- or step-plus-function terms. 35 U.S.C. § 112, paragraph 6 provides that:

> An element of a claim for a combination may be expressed as a means or step for performing a specified function without the recital of structure, material, or acts in support thereof, and such claim shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof.

A "means-plus-function" claim term provides "purely functional limitations that do not provide the structure that performs the recited function." *Phillips*, 415 F.3d at 1311. A claim term is presumed to be means-plus-function when the word "means" appears in the claim element. *Callicrate v. Wadsworth Mfg. Co.*, 427 F.3d 1361, 1368 (Fed. Cir. 2005).

The construction of a means-plus-function limitation requires two steps. First, the claimed function is determined. *JVW Enters., Inc. v. Interact Accessories, Inc.*, 424 F.3d 1324, 1330 (Fed. Cir. 2005). Second, "the corresponding structure in the written description that performs that function" is identified. *Id*. A court may not import functional limitations that are not recited in the claim, or structural limitations from the written description that are unnecessary to perform the claimed function. *Micro Chem., Inc. v. Great Plains Chem. Co.*, 194 F.3d 1250, 1258 (Fed. Cir. 1999).

With these standards and rules in mind, the Court turns to the undisputed and disputed claim terms of the '302 Patent.

B. Undisputed Terms

The parties agree on and the Court adopts the constructions of the following terms:

"board ending means"	Construed under 35 USC §112, ¶6 as the ending rolls as shown in reference numeral 26 for urging lumber against board positioners 28, and in particular, against positioner paddles 40.
"coupling means"	Construed under 35 USC §112, ¶6 to be a channel portion of the selectively actuable guide member 30 that engages the guide member engaging means.
"translation speed"	The velocity at which a board travels in the first direction, measured by reference to a fixed point

C. Disputed Terms

The parties dispute nine terms in the '302 Patent, and USNR requests that the Court correct one typographical error in another term. As a threshold matter, USNR argues that its request for the construction of certain terms "should not be construed as an admission that such terms are required elements or limitations of the claimed invention."

Dkt. 50 at 8. While USNR may reserve its position for a subsequent motion on the issue, the Court will proceed on the theory that the terms of the claim are limitations because it "is a 'bedrock principle' of patent law that 'the claims of a patent define the invention to which the patentee is entitled the right to exclude.'" *Phillips*, 415 F.3d at 1312 (quoting *Innova/Pure Water, Inc. v. Safari Water Filtration Systems, Inc.*, 381 F.3d 1111, 1115 (Fed. Cir. 2004)). With this is mind, the Court turns to the disputed terms.

1. "Board positioning member"

The parties request that the Court construe the term "board positioning member." Dkt. 56 at 3–4. This element of the invention makes contact with the board and moves with the board from the position of first contact to the optimized board position. Raptor proposes that the Court construe the term as a "generally telescoping device having a sleeve receiving a shaft and a paddle which can cooperate with the selectively actuable guide member in the plane of the board translating device." Dkt. 56 at 4. During oral argument Raptor's counsel conceded that "telescoping" could be an incorrect limitation and offered the construction of "a generally linearly extensible device having a sleeve receiving a shaft and a paddle . . . ." Piché agrees and requests that the Court adopt this or a similar construction. Dkt. 49 at 10. The problem with these constructions, however, is that they are based off the description of the preferred embodiment. *See Phillips*, 415 F.3d at 1323 (even if the specification describes very specific embodiments, the claim terms should not be confined to those embodiments). Therefore, the Court declines to adopt either of these constructions.

With regard to USNR's proposed construction, the Court finds that it incorporates almost all of the disclosed limitations, but lacks one important limitation. USNR proposes that the Court construe the term as a "surface that is movably coupled to the board positioning member translating means that can be selectively positioned in the second direction[1] to place the board in an optimized board position." Dkt. 56 at 4. In other words, USNR is describing a paddle or similar structure (surface) that is somehow coupled to the means of moving the board from the position of first contact to the optimized position. Raptor contends, and Piché agrees, that such a construction ignores the requirement that the board positioning member must interact with the selectively actuable guide member. Dkt. 52 at 7–8. The Court agrees. In the summary of the invention, the specification provides that the "board positioning member has a guide member engaging means for slideably coupling, by coupling means, the board positioning member to the selectively actuable guide member." '302 Patent, col. 3, ll. 25–28. The preferred embodiment discloses that "Positioner guide rollers (or pins) 36 are mounted to and protrude from positioner shafts 38 so as to slidingly engage guides 30." *Id*., col. 4, ll. 50–53. Therefore, the Court declines to adopt USNR's proposed construction because it does not include the important cooperating limitation.

With regard to this missing limitation, Raptor provides an acceptable construction. Raptor proposed a shaft and a paddle that "can cooperate with the selectively actuable

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[1] The patent references a first direction and a second direction. The first direction is the direction of movement toward the board trimmers whereas the second direction is a direction perpendicular to the board trimmers that places a particular board in an optimized position to be trimmed.

guide member in the plane of the board translating device." Dkt. 56 at 4. Adding this limitation to USNR's construction, the Court construes the term "board positioning member" as

> a surface that is movably coupled to the board positioning member translating means and cooperates with the selectively actuable guide member in the board positioning direction so that the board may be selectively positioned in an optimized board position.

2. "Optimization means"

The parties request that the Court construe the term "optimization means", and they agree that the term should be construed as a means-plus-function term. Dkt. 56 at 5. The Court agrees and must first determine the claimed function. *JVW Enters.*, 424 F.3d at 1330. The claim language describes a device to "selectively position said board in said second direction at an optimized board position predetermined by optimization means cooperating with said selectively actuable guide member." '302 Patent, col. 6, ll. 53–56. USNR contends that the claimed function is to "predetermine the optimized board position of a board." Dkt. 54 at 11. Although Raptor and Piché provide somewhat different functions, they "appear to agree" on the claimed function and the real dispute lies in determining the corresponding structure. Dkt. 52 at 8. Therefore, the Court finds that the claimed function of the "optimization means" is to "predetermine the optimized board position of a board."

The second step of construction requires the Court to identify the corresponding structure for performing that function. *JVW Enters.*, 424 F.3d at 1330. The specification describes a "board optimizer" in the summary of the invention and an "optimizer" in the

detailed description of the preferred embodiment. First, the "board optimizer" is "an optical scanner and its cooperatively associated optimization information processor and controller, scanning and providing optimization and control information to the board positioning device in relation to an optimized trimming solution for the board." '302 Patent, col. 4, ll. 7–11. Second, the detailed description discloses

> An electro-optical scanner (not shown) scans boards 24 and provides shape and flow information to an optimizer such as a programmed computer. The optimizer shown diagrammatically in FIG. 3, sends signals to a computer logic controller for the corresponding board 24. The logic controller activates and selectively actuates bi-directional positioning cylinders 32 as board 24 is translated on transfer chain 14.

Id., col. 5, ll. 10–17.

Raptor and Piché argue that the Court should determine that the required structure is the structure that is disclosed in the summary of the invention. Dkt. 56 at 5. That disclosure, however, is preceded by the qualifying language "[i]n a further aspect [of the present invention]" and "board optimizer" is immediately followed by the term "such as", which is commonly understood as providing a specific example of the preceding element. Therefore, the Court declines to construe the term as this specific structure and must determine whether the preferred embodiment discloses a different corresponding structure for performing the identified function.[2]

The inventor disclosed that, in the preferred embodiment, the optimizer was a programmed computer that receives "shape and flow information." '302 Patent, col. 5, ll.

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[2] It is worth noting that neither Raptor nor Piché argue that the patent is invalid for indefiniteness because they concede that the patent discloses at least one structure for performing the identified function.

10–17. USNR contends that the programmed computer is a structure that performs the identified function. Dkt. 56 at 6. Raptor and Piché disagree with this contention. Dkts. 52 at 8–9 & 53 at 8–9. During oral argument, Piché's counsel argued that such a construction would result in a "brain with no eyes." However, sticking with this analogy, the brain can receive input from four other senses and operate properly. As the Court understands the invention and as USNR's expert testified, how the optimizer receives input is not important. What is important is that the optimizer predetermines the correct cutting position of the board based on the information that it does receive. Therefore, the Court adopts USNR's proposed construction with an added "receiving" limitation and construes the term "optimization means" as

> either a programmed computer that receives shape and flow information or an optical scanner and its cooperatively associated optimization information processor and controller for calculating the optimized board position.

3. "Board translating device"

Raptor and USNR request that the Court construe the term "board translating device." Dkt. 56 at 3. In the preferred embodiment, this device transports the boards in the first direction. Raptor proposes that the Court construe the term as a "generally horizontal table having transfer chains or belts for transferring lumber in the plane of the table." Dkt. 56 at 3. USNR contends that, because this is not a mean-plus-function term, it would be improper to incorporate the specific means of transport (the chains or belts) into the claim. Dkt. 54 at 12–13. The Court agrees. Although chains and belts are disclosed in the specification, the claim language is broadly written and it would be err to

limit this element to those specific disclosures. *Phillips*, 415 F.3d at 1323. Therefore, the Court declines to adopt Raptor's proposed construction.

USNR proposes that the Court construe the term as a "support frame for transferring a board in a first direction." Dkt. 56 at 3. The phrase "a support frame" is overly broad and is not disclosed in any part of the patent. In the summary of the invention, the patentee discloses a "transfer table" that "translate[s] the boards to positioners and through a trimmer." '302 Patent, col. 1, ll. 65–67. Therefore, incorporating the actual disclosure, the Court construes the term "board translating device" as

a transfer table for transferring a board in the first direction.

4. "Board positioning member translating means"

Both USNR and Piché agree that the Court should construe the term "board positioning member translating means" as a means-plus-function term. Dkts. 49 at 6 & 50 at 19. The Court agrees and must first determine the claimed function. *JVW Enters.*, 424 F.3d at 1330. USNR contends that the function is set forth in the claim language: "board positioning member translating means for translating said board positioning member in said first direction at said translation speed in cooperative alignment with said board . . . ." '302 Patent, col. 6, ll. 46–49. In plain English, the function is the translation, or movement, of the board positioning members in the first direction at a speed cooperative with the boards on the transfer table. Now that the function has been determined, the Court must identify the corresponding structure for performing that function. *JVW Enters.*, 424 F.3d at 1330.

The specification provides a general description of this device and a specific structure in the preferred embodiment. First, the specification provides as follows:

> The board positioning member translating means is a flexible rotatable member, such as a chain or belt, rotating in a generally vertical plane . . . .
>
> The flexible rotatable member rotates in the vertical plane so as to translate the board, in a first direction, positioning member substantially in the horizontal plane when cooperatively aligned with the board, at the translation speed . . . .

'302 Patent, col. 3, ll. 8–18. Second, the specific embodiment of this element is described as follows:

> The board positioners 28 are mounted on a set of positioned chains (or belts) 42 that are, at one end, mounted on, and driven by, positioner drive sprockets 44 on positioned drive shaft 46, and at their other end, mounted on a pair of positioner idler sprockets 48 on a positioner idler shaft 50.

'302 Patent, col. 4, ll. 55–59.

Based on these disclosures, USNR proposes that the Court construe the term "board positioning member translating means" as "a flexible rotatable member such as the chain shown in reference numeral 42, or a belt, for moving one or more board positioning members in the first direction." Dkt. 46 at 4–5. Although this construction recognizes the mounting structure, such as the chain or belt, this construction does not account for the translating limitation or drive structure. The Federal Circuit has provided as follows:

> The court must construe the function of a means-plus-function limitation to include the limitations contained in the claim language, and only those limitations. It is improper to narrow the scope of the function beyond the claim language. It is equally improper to broaden the scope of the claimed function *by ignoring clear limitations in the claim language*.

Cardiac Pacemakers, Inc. v. St. Jude Med., Inc., 296 F.3d 1106, 1113 (Fed. Cir. 2002) (citing *Lockheed Martin Corp. v. Space Sys./Loral, Inc.*, 249 F.3d 1314, 1324 (Fed. Cir. 2001)) (emphasis added). USNR concedes that the function is to translate the positioning member at a specific translation speed in cooperative alignment with the board to be positioned. Construing this "translating means" to simply be a "flexible rotatable member" such as a chain or a belt would improperly broaden the scope of the claimed function by ignoring the clear limitation that the chain or belt must be driven by some structure. Therefore, the Court declines to adopt USNR's proposed construction.

Piché contends that the Court should adopt the structure identified in the specific embodiment. Dkt. 56 at 4–5. The problem with this construction is that it allows for two different rotating structures, a chain or a belt, and only one drive structure, a sprocket. On this issue, USNR's expert testified that one of ordinary skill in the art would understand that a sprocket would not be the only structure capable of rotating a chain or belt and that a chain or belt could be driven by a pulley, a V sheaves, or a drum. The Court agrees with that assessment of what one of ordinary skill in the art would understand. Therefore, the Court construes the term "board positioning member translating means" as

> a set of positioned chains (or belts) that are, at one end, mounted on, and driven by, positioner drive sprockets (or similar drive structures) on positioned drive shaft, and at their other end, mounted on a pair of positioner idler sprockets (or similar structure) on a positioner idler shaft.

'302 Patent, col. 4, ll. 55–59.

5. "Selectively actuable guide member"

Piché and USNR request that the Court construe the term "selectively actuable guide member." Dkt. 56 at 4. Piché proposes that the Court construe this term as a "set of pivoting channels as show in reference numeral 30(a)-30(d)." *Id*. Although this construction obviously imports limitations from the preferred embodiment into the claims, Piché argues that such limitations are necessary because the element is disclosed as "interacting with means-plus-function terms . . . ." Dkt. 49 at 8. Specifically, Piché argues that, because the guide member engaging means claimed in claim two should be construed to engage a channel entrance, the guide members disclosed in claim one should be construed to be the channels of the preferred embodiment. *Id*. at 8–9. This construction violates numerous cannons of claim construction, including the canon of claim differentiation wherein it is presumed "that different words used in different claims result in a difference in meaning and scope for each of the claims." *Clearstream Wastewater Systems, Inc. v. Hydro-Action, Inc.*, 206 F.3d 1440, 1446 (Fed. Cir. 2000). Therefore, the Court declines to adopt Piché's proposed construction.

USNR proposes that the Court construe the term as "positionable device(s) that moves the board positioning member to the board optimizing position." Dkt. 56 at 4. The Court finds that this construction falls within the scope of the written description. For example, the summary of the invention provides "a plurality of guides" that are "independently selectively positionable to allow . . . independent optimized board positioning of successive boards at high transfer chain speeds." '302 Patent, col. 2, ll. 11–16. The specification also provides that board positioners "progressively slide . . . to

optimized positions for their corresponding boards" as a "result of the progressive actuation of bi-directional selectively actuable positioning cylinders 32 which move position guides 30 . . . ." *Id*., col. 5, ll. 14–23. Therefore, the Court construes the term "selectively actuable guide member" as

> positionable device(s) that moves the board positioning member to the board optimizing position.

6. "Board positioning member engaging position"

Piché and USNR request that the Court construe the term "board positioning member engaging position." Dkt. 56 at 8. Claim 2 provides that the board

> is urged in said second direction between a board positioning member engaging position, wherein said board is urged against said board positioning member when said board positioning member is in a first contact position, and said optimized board position . . . .

'302 Patent, col. 7, ll. 6–10. Piché proposes that the Court should construe the engaging position to be a "constant point of engagement between the board and the board positioning member as they both move in the first direction at the translation speed." Dkt. 56 at 8. Piché argues that the engaging position must be interpreted as something different from the "first contact position" otherwise one of the terms would be superfluous. Dkt. 49 at 9–10. USNR, however, provides a reasonable explanation for the two terms; "first contact position" refers to the position of the board positioning member and "board positioning member engaging position" refers to the position of the board. Dkt. 55 at 13–15. The Court agrees with USNR's position on positions. First, a plain reading of the claim shows that the patentee was referring to translating the board from the initial position of the board to the final position of the board, which is the "optimized

board position." Second, claim two also provides a "means for returning said board positioning member from said board optimizing position to said first contact position . . . ." '302 Patent, col. 7, l. 31 to col. 8, l. 1. Therefore, the Court adopts USNR's proposed construction and construes the term "board positioning member engaging position" as the

> location of the board at which the board first contacts the board positioning member.

7. "Guide member engaging means"

Piché and USNR request that the Court construe the term "guide member engaging means", and they agree that the term should be construed as a means-plus-function term. Dkt. 56 at 11. The Court agrees and must first determine the claimed function. *JVW Enters.*, 424 F.3d at 1330. Claim two provides that the board positioning member must have a "guide member engaging means for slideably coupling, by coupling means, said board positioning member to said selectively actuable guide member" ('302 Patent, col. 7, ll. 11–14), the member must be "disengageable from said coupling means" (*id*., ll. 25–30), and the member must be repositioned to "reengage said coupling means" (*id*., col. 8, ll. 3–6). Although the patent discloses the engaging-disengaging-reengaging functions, Piché argues that the Court should only consider the engaging function. Dkt. 49 at 7. The Court declines to ignore the other disclosed functions of this member and finds that the identified functions are the board positioning member engaging-disengaging-reengaging the selectively actuable guide member.

The second step of construction requires the Court to identify the corresponding structure for performing those functions. *JVW Enters.*, 424 F.3d at 1330. If one

disregards Piché's identified function analysis, then the parties generally agree on the corresponding structure. *See* Dkt. 56 at 9. Therefore, the Court construes the term "guide member engaging means" as

> positioner guide rollers (36), or pins, that couple the board positioning member to the selectively actuable guide member.

8. "Means for returning said board positioning member"

Piché and USNR request that the Court construe the term "means for returning said board positioning member", and they agree that the term should be construed as a means-plus-function term. Dkt. 56 at 12. The Court agrees and must first determine the claimed function. *JVW Enters.*, 424 F.3d at 1330. The parties agree that the identified function is to return the board positioning member from the optimized position to the non-optimized, first contact position. Therefore, the Court adopts this identified function.

Next, the Court must identify the corresponding structure for performing that function. *JVW Enters.*, 424 F.3d at 1330. The only disagreement between the parties is whether the guide referenced as numeral 54 must be curved. Dkt. 56 at 12. The invention summary discloses "a return guide that resets the board positioned to its first contact position . . ." ('302 Patent, col. 2, ll. 48–49) and the specific embodiment discloses a "[c]urved positioned return guide . . ." (*id.*, col. 4, l. 63). The Court finds that a person of ordinary skill in the art would understand the broader disclosed structure and there is no need to include the limitation that the guide be curved. Therefore, the Court adopts USNR's proposed construction and construes the term "means for returning said board positioning member" as

> a guide as shown at reference numeral 54 that resets the board positioning member.

9. "Angled guide means"

Piché and USNR request that the Court construe the term "angled guide means", and they agree that the term should be construed as a means-plus-function term. Dkt. 56 at 13. The Court agrees and must first determine the claimed function. *JVW Enters.*, 424 F.3d at 1330. Both parties agree that the identified function is to return the board positioning member from the optimized position to the non-optimized, first contact position. Therefore, the Court adopts this identified function.

Next, the Court must identify the corresponding structure for performing that function. *JVW Enters.*, 424 F.3d at 1330. The only disagreement between the parties is whether the guide referenced as numeral 54 must be curved. Dkt. 56 at 13. It's undisputed that "curved" and "angled" have two different meanings. For example, a curved guide member could be or could not be placed at an angle and a guide member that is placed at an angle could be or could not be curved. Moreover, because the patentee disclosed a "[c]urved positioned return guide" and a "fixed, angled guide means", he is entitled to the presumption that he used different language to refer to two different structures. Finding no evidence to the contrary, the Court declines to limit the angled guide to the pictured curved guide. Therefore, the Court adopts USNR's proposed construction and construes "angled guide means" as

> a guide that is not parallel to the first direction as shown at reference numeral 54 that resets the board positioning member.

10. "Said coupling means in a channel along said channel member for

slideably engaging therein said guide member engaging means"

USNR requests that the Court correct what it claims is an error in the phrase "said coupling means in a channel along said channel member for slideably engaging therein said guide member engaging means." Dkt. 50 at 27–28. USNR requests that the Court change the word "in" to "is" so that the phrase is identical to the disclosure in the summary of the invention. *Id*. at 28. The Federal Circuit has held that

> A district court can correct a patent only if (1) the correction is not subject to reasonable debate based on consideration of the claim language and the specification and (2) the prosecution history does not suggest a different interpretation of the claims.

Novo Industries L.P. v. Micro Molds Corp., 350 F.3d 1348, 1357 (Fed. Cir. 2003).

In this case, the Court will correct the '302 Patent. First, neither Piché nor Raptor challenges the requested change. Second, the Court finds that the requested correction is not subject to reasonable debate and the prosecution history does not suggest a different interpretation. Therefore, the subject phrase shall be corrected to claim

> said coupling means is a channel along said channel member for slideably engaging therein said guide member engaging means.

IV. ORDER

Therefore, it is hereby **ORDERED** that the undisputed and disputed terms of the '302 Patent shall be construed as set forth herein.

Dated this 18th day of April, 2013.

RONALD B. LEIGHTON
UNITED STATES DISTRICT JUDGE